THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.24920 of 2005

Date: 21.03.2007

Between:

Somisetty Venkata Sesha Rao.

....Petitioner

And

The Commissioner & Inspector General, Registration and Stamps Department, NBK Estates, Golconda X Roads, Hyderabad and others.

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.24920 of 2005

O R D E R:

Petitioner filed O.S.No.39 of 2004 in the Court of District Judge, Nellore, for the relief of specific performance of an agreement of sale, in respect of 'A' and 'B' schedule properties therein. The suit was decreed and after the decree became final, he filed E.P.No.11 of 2005. Since the respondents did not cooperate in the matter of execution of sale deed, the Court took upon itself, the exercise of execution of sale deed. After ascertaining the market value, stamp duty and registration charges payable on the deed, the learned District Judge executed a sale deed, dated 16.05.2005 and it was registered by the 4th respondent.

The third respondent issued a notice, dated 09.08.2005, under Section 41-A of the Indian Stamp Act, 1899 (for short 'the Act') to the petitioner. It was pointed out that according to him, the sale deed executed in favour of the petitioner was not properly stamped and that it did not represent the correct market value. According to him, the petitioner was liable to pay the deficit stamp duty

of Rs.57,59,800/-, deficit registration fee of Rs.2,39,975/- and a penalty of three times thereon. He called upon the petitioner to pay the said amount or put forth his objections, within the time stipulated therein. Two months thereafter, a notice under Section 27 of the Act was issued with verbatim the same contents. The petitioner challenges the two notices, as being illegal, arbitrary and contrary to the provisions of the Act.

Sri D.Prakash Reddy, the learned senior counsel appearing for the petitioner submits that the stamp duty and registration fee payable on the sale deed was ascertained by the learned District Judge, Nellore from the 4th respondent, and the amounts were paid, as per the information furnished by the 4th respondent, vide letter, dated 30.04.2005 and there was absolutely no basis for the third respondent to issue the impugned notices. He contends that neither there was any occasion nor basis for initiation of proceedings under Sections 27 and 41-A of the Act.

On behalf of the respondents, a counter affidavit is filed. They took an objection as to the maintainability of the writ petition. It is urged that the petitioner can put forward all his objections to the show cause notices and it is pre-mature, at this stage, to contend either way.

Learned Government Pleader for Revenue submits that once the third respondent has exercised his statutory powers, they cannot entail in a final order. He submits that the petitioner cannot assail the show cause notices, since they are issued by an authority vested with the power.

The record discloses that after the decree became final and the petitioner filed the E.P., the learned District Judge, Nellore addressed a letter, dated 29.04.2005 to the 4th respondent, to intimate the particulars of stamp duty and registration fee, payable for the sale of 'A' schedule property. Through his communication, dated 30.04.2005, the 4th respondent informed the learned District Judge that the stamp duty of Rs.82,13,400/-, registration fee of Rs.3,42,225/- and user charges of Rs.100/- are payable for the document. The sale deed was accordingly executed, after ensuring the payments, as indicated above.

The occasion to invoke the power under Section 47-A of the Act arises, when the Collector finds that the registering authority committed mistake, in the matter of calculation of stamp duty and registration charges. It is only after the detection of the mistake, that further steps

can be taken. The show cause notices do not refer to any mistake, except that the third respondent has indicated his own view of the matter. Further, he did not dispute the correctness of the figures furnished by the 4th respondent, before the document came to be presented for registration. These, however, are the factors, which need to be taken into account by the third respondent, while passing the final order. The petitioner cannot be said to have suffered any grievance with the issuance of show cause notices. It is not as if the notices were issued by an authority not vested with the power. This Court would be slow to interfere with the show cause notices, except where they are issued by the authorities, who are not vested with the power. The petitioner can put forward all his contentions before the 3rd respondent and there is no reason to believe that they would not be taken into account, before a final order is passed.

For the foregoing reasons, the Writ Petition is disposed of, leaving it open to the petitioner to submit his explanation to the impugned show cause notices, within a period of three (3) weeks from today. The third respondent shall take the factual and legal aspects into account, before he passes the final order. There shall be no order as to costs.

21.03.2007

Note: Issue C.C. in three (3) days.

(B/o)

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